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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/247,219	02/10/1999	PEGGY M. TOMASULA	862.004US1	7387

25712 7590 03/19/2002

USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER
NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH
1815 N. UNIVERSITY STREET
PEORIA, IL 61604

EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

20

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

DIFF=20

Office Action Summary

Application No.

09/29,219

Applicant(s)

TOMASULA

Examiner

ARTHUR L. CORBIN

Group Art Unit

1261

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 1-2-02

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 2, 4-6, 9, 11-13, 15-19

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

☐ Claim(s)

is/are allowed.

☒ Claim(s) 2, 4-6, 9, 11-13, 15-19

is/are rejected.

☐ Claim(s)

is/are objected to.

☐ Claim(s)

are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1761

1. In view of the appeal brief filed on January 2, 2002, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 4-6, 9, 11-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomasula in view of Dahlstrom et al.

Tomasula is described in detail in paragraph no. 02, paper no. 5. Additionally, Tomasula discloses operating pressures of 400-800 ^{psi} ~~xxx~~ (col. 4, line 28) and operating temperatures of 35 to 60° C (col. 3, lines 34-36). Tomasula also indicates that a ^{pH} ~~xxx~~ of 4.3 to 5.3 is optimal for precipitating casein ^{from} ~~xxx~~ milk. Lastly, and of greatest

Art Unit: 1761

significance, is the disclosure in Tomasula that the process described therein is applicable to precipitate proteins which are known to precipitate in acidic media (col. 4, lines 29-38). It would have been obvious to substitute soy milk for part or all of the ^{dairy} milk starting material in Tomasula since it is known to precipitate or coagulate protein from dairy milk or soy milk or a mixture thereof by coagulating the milk with a food grade acid, e.g. carbonic acid ^{as evidenced by Dahlstrom et al} (col. 3, lines 23-35 and 49-55 and col. 8, lines 39-45) and since Tomasula's process can be used to precipitate proteins which are known to precipitate in acid. Thus, a soy protein product will result when soy milk is treated in accordance with Tomasula's process. Finding the optimum initial ^{and} final protein concentrations and the optimum holding time would require nothing more than routine experimentation by one reasonably skilled in this art. However, protein concentration of precipitated protein is naturally greater than protein concentration of a solution containing a protein source since the protein precipitate is mostly free of water.

4. Applicant's arguments with respect to claims 2, 4-6, 9, 11-13 and 15-19 submitted January 2, 2002 have been considered but are moot in view of the new ground(s) of rejection.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 1761

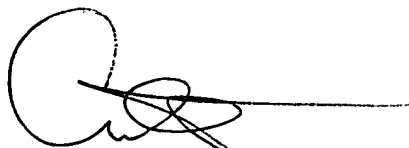
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday - Friday 10:00 am to 7:30 pm., and alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Examiner Corbin/ng
March 19, 2002


ARTHUR L. CORBIN
PRIMARY EXAMINER
3-19-02